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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,036	02/13/2004	Gerald Hatkoff	24131.00	3900

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EXAMINER

LAUX, JESSICA L

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 05/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/777,036	<b>Applicant(s)</b> HATKOFF, GERALD	
	<b>Examiner</b> Jessica Laux	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>02/13/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7 and 9-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Nasi (6170215).

In regards to claim 1: Nasi discloses a locking siding panel assembly, comprising: a plurality of siding panels, each panel having a main body with a front surface, a rear surface, a top edge, a bottom edge and a pair of ends (Figure 14); a locking lap assembly (600) disposed along the back surface of each of said panels at each end of said panels (Figure 4); whereby the locking lap assembly locks adjacent siding panels together securely to prevent them from being separated by wind (Figure 15).

In regards to claim 2: The assembly according to claim 1, wherein said locking lap assembly further comprises: a generally rectangular spacing member having a front surface and a rear surface, the front surface being secured to the rear surface of said panel; and a locking lap member, having a front surface, a rear surface secured to the front surface of the spacing member, an interior end secured to the spacing member and an exterior end extending farther than the end of said panels; whereby the spacing member provides a space between the locking lap member and said panel for receiving the exterior end of the locking lap member of an adjacent panel for overlappingly locking two adjacent panels. Where Figure 6 shows the clip depicted in Figures 14 and 15, and the clip has a spacing element (602) and a locking lap element (604). The limitations in

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the claim that the spacing member and locking lap member have a front and rear surface member that are secured together and to the siding panel is considered to be a process of making the product and does not patentably distinguish from Nasi, as the end result is the same product. Further Nasi discloses in col. 5, lines 31-32 that the element 600 may be made of two or more parts. Therefore applicant's invention fails to patentably distinguish over the prior art of Nasi.

In regards to claim 3: The assembly according to claim 1, wherein said panels are single lap siding panels with the main body comprising a plurality of longitudinally extending, generally flat and inclined panel portions (1406 -1409) interconnected by longitudinally extending offset step portions (Figure 14).

In regards to claim 4: The assembly according to claim 2, wherein said spacing member comprises a shape conforming to the panels having a main body with a plurality of longitudinally extending, generally flat body portions interconnected by longitudinally extending offset step portions (Figure 14; the spacing member conforms to the panel depicted in Figure 14, where the panel has a main body with a plurality of longitudinally extending, generally flat body portions (1406-1409) interconnected by a longitudinally extending offset portion).

In regards to claim 5: The assembly according to claim 2, wherein said locking lap member comprises a shape conforming to the panels having a main body with a plurality of longitudinally extending, generally flat body portions interconnected by longitudinally extending offset step portions (Figures 14 and 15; the locking lap member conforms to the panel depicted in Figures 14 and 15, where the panel has a main body

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with a plurality of longitudinally extending, generally flat body portions (1406-1409) interconnected by a longitudinally extending offset portion).

In regards to claims 6 and 7: The assembly according to claim 2, wherein, said spacing member is secured to the rear surface of said panel and said locking lap member is secured to the front surface of said spacing member, by an adhesive layer (Col. 6, line 64 - Col. 7, line 2). It should be noted that claims 6 and 7 are considered a product-by-process claim. The patentability of the product does not depend on its method of production. Determination of patentability is based on the product itself. See MPEP 2113. If the product-by-process claim is the same as or obvious from a product of the same prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed.Cir.1985). As in claim 2 above, the limitations in the claim that the spacing member and locking lap member have a front and rear surface member that are secured together and to the siding panel is considered to be a process of making the product and does not patentably distinguish from Nasi, as the end result is the same product. Further Nasi discloses in col. 5, lines 31-32 that the element 600 may be made of two or more parts. Therefore applicant's invention fails to patentably distinguish over the prior art of Nasi.

In regards to claim 9: The assembly according to claim 1, further comprising a retaining lip (Figures 14 and 15; Col. 3, lines 40-44) extending along the bottom edge of each of said panels on the rear surface of the panels.

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In regards to claim 10: The assembly according to claim 9, further comprising a curved engaging member (Figures 14 and 15; Col. 3, lines 37-40) extending along the top edge of each of said panels on the front surface of said panels, wherein the engaging member engages the retaining lip of a vertically adjacent panel positioned directly above to align the panels.

In regards to claim 11: The assembly according to claim 1, further comprising a fastener strip (Figures 14 and 15; Col. 3, lines 37-40) extending along the top edge of each of said panels, said fastener having a plurality of fastener receiving holes capable of receiving fasteners to secure said panels to a building structure.

In regards to claim 12: The assembly according to claim 1, wherein said panels are made from a material selected from the group consisting of vinyl, polyvinyl chloride, aluminum, steel and extruded polymer materials (Col. 1, lines 6-10 and Col. 6, line 61).

In regards to claim 13: The assembly according to claim 12, wherein said panels are made from vinyl (Col. 1, lines 6-10 and Col. 6, line 61).

In regards to claim 14: The assembly according to claim 1, wherein said locking lap assembly is made from a material selected from the group consisting of vinyl, polyvinyl chloride, aluminum, steel and extruded polymer materials (Col. 5, lines 27-31).

In regards to claim 15: The assembly according to claim 14, wherein said locking lap assembly is made from vinyl (Col. 5, lines 27-31).

In regards to claim 16: Nasi discloses a locking lap assembly for securing adjacent siding panels comprising: a generally rectangular spacing member having a front surface and a rear surface, the front surface being secured to a rear surface of a

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siding panel; and a locking lap member, having a front surface, a rear surface secured to the front surface of the spacing member, an interior end secured to the spacing member and an exterior end extending farther than the end of said panels; whereby the spacing member provides a space between the locking lap member and the panel for receiving the exterior end of the locking lap member of an adjacent panel for overlappingly securing two adjacent panels. Where Figure 6 shows the clip depicted in Figures 14 and 15, and the clip has a spacing element (602) and a locking lap element (604). The limitations in the claim that the spacing member and locking lap member have a front and rear surface member that are secured together and to the siding panel is considered to be a process of making the product and does not patentably distinguish from Nasi, as the end result is the same product. Further Nasi discloses in col. 5, lines 31-32 that the element 600 may be made of two or more parts. Therefore applicant's invention fails to patentably distinguish over the prior art of Nasi.

In regards to claim 17: The assembly according to claim 16, wherein said spacing member comprises a shape conforming to the panels having a main body with a plurality of longitudinally extending, generally flat body portions interconnected by longitudinally extending offset step portions (Figure 14; the spacing member conforms to the panel depicted in Figure 14, where the panel has a main body with a plurality of longitudinally extending, generally flat body portions (1406-1409) interconnected by a longitudinally extending offset portion).

In regards to claim 18: The assembly according to claim 16, wherein said locking lap member comprises a shape conforming to the panels having a main body with a

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plurality of longitudinally extending, generally flat body portions interconnected by longitudinally extending offset step portions (Figures 14 and 15; the locking lap member conforms to the panel depicted in Figures 14 and 15, where the panel has a main body with a plurality of longitudinally extending, generally flat body portions (1406-1409) interconnected by a longitudinally extending offset portion).

In regards to claim 19: The assembly according to claim 16, wherein said locking lap member is secured to the front surface of said spacing member by an adhesive layer. It should be noted that claim 7 is considered a product-by-process claim. The patentability of the product does not depend on its method of production. Determination of patentability is based on the product itself. See MPEP 2113. If the product-by-process claim is the same as or obvious from a product of the same prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed.Cir.1985). As in claim 16 above, the limitations in the claim that the spacing member and locking lap member have a front and rear surface member that are secured together is considered to be a process of making the product and does not patentably distinguish from Nasi, as the end result is the same product. Further Nasi discloses in col. 5, lines 31-32 that the element 600 may be made of two or more parts. Therefore applicant's invention fails to patentably distinguish over the prior art of Nasi.

In regards to claim 20: The assembly according to claim 16, wherein said locking lap assembly is made from vinyl (Col. 5, lines 27-31).

***Claim Rejections - 35 USC § 103***



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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nasi (6170215) in view of Gilbert et al. (6161354).

In regards to claim 8: Nasi discloses the assembly according to claim 1, wherein the siding panel simulates wooden siding (Col. 1, line 11), but does not disclose that the front surface of the panels is textured to simulate natural wood grains. Gilbert et al. discloses a siding panel with a central portion that includes an aesthetic pattern (Col. 1, lines 65-66) that simulates a wooden siding shingle having simulated natural wood grains (Col. 3, lines 10-12; Figures 4 and 5). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the siding panel of Nasi to have a textured surface as taught by Gilbert et al. as such a modification would improve the aesthetic appearance of simulated wooden siding.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Friday, 8:30am to 4:00pm (est).


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



JL  
05/25/2006

  
N. Slack  
Primary